

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI**

RANDOLPH MICHAEL RABBE	)	
and	)	
LISA ANN RABBE	)	
	)	Case No. 5:17-cv-06021-SRB
Plaintiffs,	)	
	)	
vs.	)	
	)	
WELLS FARGO HOME MORTGAGE,	)	
INC., WELLS FARGO, N.A.	)	
	)	
Defendants.	)	

**WELLS FARGO BANK, N.A.’S MOTION FOR ORDER NUNC PRO TUNC**

Defendant Wells Fargo Bank, N.A. (individually and as successor of Wells Fargo Home Mortgage, Inc.), (hereinafter, “Wells Fargo”), by and through its attorneys, Lathrop Gage LLP, hereby moves the Court for an Order Nunc Pro Tunc correcting the Court’s docket in this case to remove Wells Fargo’s counsel as defendants. In support of this Motion, Wells Fargo states and alleges as follows:

**I. INTRODUCTION**

The Court dismissed this case on April 19, 2017. Plaintiffs are now appealing that decision to the Eighth Circuit Court of Appeals. The Eighth Circuit has indicated that it construes Counsel for Wells Fargo as defendants/appellees in this case based on this Court’s docket sheet. This Court’s record, however, does not reflect that Counsel for Wells Fargo were ever added as parties to this action. Wells Fargo respectfully requests that the Court issue an Order Nunc Pro Tunc to correct this error so that the appeal can proceed without Counsel for Wells Fargo being incorrectly identified as parties to this action.

## **II. BACKGROUND FACTS**

1. Plaintiffs originally filed their Petition [Doc. # 1-1] against Wells Fargo in the Circuit Court of Platte County, Missouri.

2. Wells Fargo removed the case to this Court based on diversity jurisdiction. [Doc. # 1] and filed a Motion to Dismiss Plaintiffs' claims [Doc. # 5].

3. In response to Wells Fargo's Motion to Dismiss, Plaintiffs belatedly filed Suggestions in Opposition to the Motion to Dismiss [Doc. # 7]. In their Suggestions in Opposition to Wells Fargo's Motion to Dismiss, Plaintiffs incorrectly referred to Counsel for Wells Fargo as "Defendants" [Doc. # 7, pg. 1 & 3].

4. Plaintiffs then filed a document which the Court interpreted as a Motion for leave to Amend Complaint [Doc # 8] in which Plaintiffs did not attempt to assert any claims against Counsel for Wells Fargo, but instead argued that Counsel for Wells Fargo and others were fictional beings who did not exist [Doc. # 8, pg. 1-4].

5. Plaintiffs attached a purported Amended Complaint as Exhibit A to their Motion to Amend Complaint [Doc. # 8-1]. In their Amended Complaint [Doc. # 8-1], Plaintiffs incorrectly included Counsel for Wells Fargo in the caption as "Defendants," but did not make any claims involving Counsel for Wells Fargo.

6. Plaintiffs subsequently filed a document entitled "Addendum to Complaint Plainer Statement of Claim" [Doc. # 12]. In this purported Addendum, Plaintiffs again incorrectly included Counsel for Wells Fargo in the caption as Defendants, but made no allegations or purported claims against Counsel for Wells Fargo.

7. On April 19, 2017, the Court first granted Plaintiff's leave to amend their Complaint over Wells Fargo's objection [Doc. # 13] and then granted Wells Fargo's Motion to

Dismiss Plaintiffs' Complaint in its entirety [Doc. # 13]. In its Order dismissing this case [Doc # 13], the Court stated that the only difference between Plaintiffs original Complaint and Plaintiffs' Amended Complaint was Plaintiffs' challenge to the Court's jurisdiction [Doc. # 13, pg. 3].

8. The Court clearly did not intend to allow Plaintiffs to add Counsel for Wells Fargo as Defendants in this case.

9. The Court's docket does not reflect the issuance or service of any summons to any firm or attorney representing Wells Fargo. [Doc. # 1- 27].

10. Nevertheless, counsel for Wells Fargo – Jehan Kamil Moore, Michael Jay Abrams, and Lathrop & Gage, LLP – were added to the Court's online docket as defendants based on Plaintiffs' incorrect case caption which included those names.

11. Plaintiffs are now appealing the dismissal of this case to the United States Court of Appeals for the Eighth Circuit [Doc. # 21]. The Court of Appeals is listing Counsel for Wells Fargo as defendants in this case apparently based on this Court's docket sheet [Doc. #24, pg. 2]. The Eighth Circuit Clerk has informed the undersigned counsel that the Eighth Circuit cannot correct this Court's docket sheet

### **III. ARGUMENTS AND AUTHORITIES**

Plaintiffs' Amended Complaint does not allege any claims against Counsel for Wells Fargo. Plaintiffs never served Counsel for Wells Fargo with process in this case. In granting Plaintiffs leave to file an Amended Complaint, the Court clearly did not intend to add Counsel for Wells Fargo as defendants in this case.

Fed. R. Civ. P. 60(a) permits a correction for the purpose of reflecting accurately the decision that the Court actually made. See *United States v. Mansion House Ctr. N. Redevelopment Co.*, 855 F.2d 524, 527 (8th Cir. 1988); *Pattiz v. Schwartz*, 386 F.2d 300, 303

(8th Cir.1968). Rule 60(a) provides that errors arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party.

Wells Fargo respectfully requests that the Court issue an Order Nunc Pro Tunc clarifying that the Court's Order [Doc. # 13] did not add Counsel for Wells Fargo as defendants in this case and correcting the Court's docket sheet to remove the names Jehan Kamil Moore, Michael Jay Abrams, and Lathrop & Gage, LLP, which were added to the Court's docket sheet as defendants.

WHEREFORE, Defendant Wells Fargo Bank, N.A. (individually and as successor of Wells Fargo Home Mortgage), respectfully moves the Court to issue an Order Nunc Pro Tunc correcting the Court's docket sheet to remove Counsel for Wells Fargo as defendants in this case and granting such other and further relief as the Court deems just and proper.

Dated: August 4, 2017.

LATHROP & GAGE LLP

By: /s/ Jehan Kamil Moore

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ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing was electronically filed and served via First Class Mail, postage prepaid, this 4<sup>th</sup> day of August, 2017, to the Plaintiffs:

Randolph Michael Rabbe  
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*Pro se Plaintiffs*

/s/ Jehan Kamil Moore  
An Attorney for Defendant